IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(*Special Original Jurisdiction*)

THURSDAY, THE TWENTY FIRST DAY OF SEPTEMBER
TWO THOUSAND AND SIX

P R E S E N T

THE HON'BLE SRI JUSTICE T.CH. SURYA RAO
AND
THE HON'BLE SRI JUSTICE G.CHANDRAIAH

* * *

WP.No.14920 OF 1994

Between:

Sri Paramanand Sanghi, s/o Sri Kesari chand, Occ. Business, r/o H.No.7-1-57/2/D, Ameerpet, Hyderabad (died per LRs Petitioners 2 to 4). … Petitioners

Versus

Govt. of Andhra Pradesh
Represented by its Secretary,
Law & Legislature, Hyderabad
& Ors. … Respondents

Counsel for the Petitioners: Sri S. Niranjan Reddy

Counsel for the Respondents: GP for Revenue

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

WP.NO.14920 of 1994

O R D E R {Per the Hon'ble Sri Justice T.Ch.Surya Rao}

In the instant writ petition, petitioners seek a writ of certiorari to quash the judgment dated 19-4-1994 passed by the learned Special Court under A.P.Land Grabbing (Prohibition) Act in LGC.NO.53 of 1991. The deceased, Paramananda Sanghi was the respondent, who since died, his legal representatives have been brought on record as the petitioners. In the application filed by the State in LGC.No.53 of 1991 a petition was filed under section 8 (1) of the Act seeking eviction of the deceased - respondent. It is specifically stated that the applicant was the owner of land in an extent of Ac:1-17 guntas equivalent to 5700 sq.mts.

covered by survey no.139, correlated to TS.No.1/P, Block ‘D’, Ward No.5, Ameerpet village within the limits of Municipal Corporation of Hyderabad. Ameerpet village, which is presently included in the Secunderabad Mandal, Hyderabad district was Ex-Jagir village. Consequent upon the abolition of Jagirs under the Jagir Regulation 1358 Fasli, all Jagirs vested in the Government including the application schedule property and consequently it was classified as Government land. The land in dispute has been used as place of playground by a Government school.

It is the specific case of the applicant that the respondent who was having residential house nearby schedule property tried to encroach upon the schedule property by erecting a compound wall and since he was resisted, he filed a suit in OS.No.435 of 1971 on the file of the Court of V-Assistant Judge, City Civil

Court, Hyderabad. Eventually the suit ended in dismissal and attained finality since all the remedies in the hierarchy of courts were exhausted which confirmed the same. The Apex Court in Special Leave Petition (Civil) No.3379 of 1996 while dismissing the same interalia observed that it was open to the petitioner to file a suit for declaration of title if he was so advised. With these averments made interalia in the application, the application was filed seeking eviction and for compensation of Rs.57,00,000/- with interest and profits for a period of ten years.

The application was resisted by the deceased respondent by filing a counter. It was his case that he was the absolute owner of the land covered by survey number 40 of Ameerpet village, Hyderabad. He and his predecessors-in-title were in continuous uninterrupted possession and enjoyment of the

application schedule property for the last more than 60 years. The property in fact was given to the elder brother of the respondent by name Nityananda Sanghi and a patta by Raja Dharam Karam Bahadur Jagir of Ameerpet village by a farman dated 8th Dahman 1357 Fasli, orders were also issued to the patwari of Ameerpet village directing him to enter the name of the grantee in jamabandi in 1357 fasli and sent to special court. Thus before the abolition of Jagirs, respondent's elder brother became pattedar under the orders of Jagir Administration and the State being its successor and the Municipal Corporation of Hyderabad had duly accepted the same. Non-agricultural cess was being collected from the respondent in respect of the schedule property. The schedule property is neither the Government property nor the respondent was a

land grabber.

Based upon the above pleadings, the following issues were settled for trial:

1. *Whether the petitioner is the owner of petition schedule property ?*

2. *Whether the rival title set-up by the respondent is true and valid?*

3. *Whether the respondent is a land grabber within the meaning of the Act?*

4. *To what relief ?*

At the time of trial, the Mandal Revenue Officer concerned was examined as PW.1 besides marking Exs.A1 to A7 on the side of the applicant. The respondent and another was examined as RWs.1 and 2 besides Exs.B.1 to B.12 documents marked. Appreciating the evidence adduced thus on either side, both oral and documentary, the learned Special Court was of the view that the applicant Government was the owner of the petition schedule property and

the rival title set up by the respondent was not true and valid and that the respondent was a land grabber within the meaning of section 2 (d) read with (e) of the Act. Consequently, the Special Court allowed the application as aforesaid. The petitioners are now assailing the said orders in the instant writ petition.

It has been fairly conceded by the learned counsel for the petitioners that on issues 1 and 2 there is nothing to argue. The disputed land came to be settled by the judgment and decree in OS.No.147 of 1975 on the file of the VI-Additional Judge, City Civil Court, Hyderabad, in favour of the State. That suit was filed for declaration of title and for consequential relief of injunction in respect of the application schedule mentioned property by one R.C.Mohan Lal, claiming himself to be the owner thereof. The deceased respondent, Municipal Corporation of Hyderabad and

the State were impleaded as Defendants 1 to 3 therein. That suit virtually came to be dismissed upholding the title of the State. The judgment and decree rendered in the said suit attained finality in that view of the matter and inasmuch as the deceased respondent did not choose to file any suit for declaration of his title pursuant to the observation made by the Apex Court in the Special Leave Petition referred to hereinabove. Thus, in any view of the matter, the title over the disputed land is settled to be with the State.

Section 10 of the Act casts burden upon the applicants to prove that they are not the landgrabbers provided prima facie it is shown before the Court that the applicant State is the owner. Having regard to the discussion made hereinabove, obviously the State is

the owner and therefore, the burden has not been discharged.

But then the question that has to be considered which is aptly in the context of this case is whether the instant application filed by the State could be maintained. It has been specifically stated inter alia in the application that the deceased respondent tried to encroach upon the application schedule mentioned property by erecting a compound wall taking advantage of the fact that his house was situated nearby it and therefore the deceased respondent filed a suit for injunction in OS.No.435 of 1971 on the file of the Assistant Judge, City Civil Court, Hyderabad, which eventually ended in dismissal by the first appellate court in AS.No.126 of 1986 holding that the plaintiff had no title over the plaint schedule property. It is obvious therefore that the deceased respondent

was not in possession of the application schedule mentioned property. It is the specific case of the applicant State that the deceased respondent tried to encroach upon the disputed land, which was being used as a playground of the school by trying to construct a compound wall. In any view of the matter, it is the case of an attempt to commit the act of landgrabbing.

It is trite that plea taken by the applicant *inter alia* in the application that gives the forum but not the plea taken *inter alia* in the written statement as defence. Well when once it is a specific stand of the applicant State that the respondent tried to encroach upon the disputed land, obviously it is a case of an attempt to commit an act of landgrabbing. The law in this regard is no more *res integra* and is settled by the judgment of the Apex Court in N.Srinivas Rao V/s. Special Court

under the AP Land Grabbing (Prohibition) Act. It has been emphatically held by the Apex Court that an attempt to commit an act of landgrabbing will not attract the provisions of section 8 (1) of the Act and therefore no application could be maintained before the Special Court under the Act. Therefore, it is only a civil remedy that has to be clutched at but not a remedy under the Act. In that view of the matter, the present application filed by the State cannot be maintained.

For the above reasons, the writ petition is allowed and the judgment and decree passed by the Special Court are hereby set aside. Under the circumstances, for the same reason given hereinabove, the relief of compensation granted by the Special Court cannot be maintained.

T.CH. SURYA RAO, J.

G. CHANDRAIAH,

J.

21-9-2006.

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